

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MICHAEL FOLEY,

Plaintiff(s),

v.

K. BOURNE, et al.,

Defendant(s).

Case No. 2:15-CV-765 JCM (PAL)

ORDER

Presently before the court are the report and recommendation of Magistrate Judge Leen. (Doc. # 4). No objections have been filed, and the deadline for filing objections has now passed.

Plaintiff is a prisoner proceeding *pro se*. Plaintiff filed an application to proceed *in forma pauperis* (“IFP”) using an informal and improper form. (Doc. # 1). Because the plaintiff used the wrong form, the court denied that application and directed the court’s clerk to mail a blank copy of the correct form of the application to proceed IFP to plaintiff. (Doc. # 3).

The court instructed plaintiff to complete the new form or pay the \$400 filing fee on or before July 13, 2015. (*See* doc. # 3) and informed plaintiff that failure to do so would result in a recommendation from the magistrate judge that the case be dismissed. Plaintiff has not filed a new application, paid the fee, or taken any other action in this case. Accordingly, Judge Leen now recommends that the court dismiss the action without prejudice.

This court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). Where a party timely objects

1 to a magistrate judge's report and recommendation, then the court is required to "make a de novo
2 determination of those portions of the [report and recommendation] to which objection is made."
3 28 U.S.C. § 636(b)(1).

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5 Where a party fails to object, however, the court is not required to conduct "any review at
6 all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149
7 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a
8 magistrate judge's report and recommendation where no objections have been filed. *See United*
9 *States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review
10 employed by the district court when reviewing a report and recommendation to which no
11 objections were made); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003)
12 (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view that district courts are
13 not required to review "any issue that is not the subject of an objection."). Thus, if there is no
14 objection to a magistrate judge's recommendation, then this court may accept the recommendation
15 without review. *See, e.g., Johnstone*, 263 F. Supp. 2d at 1226 (accepting, without review, a
16 magistrate judge's recommendation to which no objection was filed). Nevertheless, this
17 court finds it appropriate to engage in a de novo review to determine whether to adopt the
18 recommendation of the magistrate judge. Upon reviewing the recommendation and underlying
19 briefs, this court finds good cause appears to ADOPT the magistrate judge's findings in full.

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22 Accordingly,

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24 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the report and
25 recommendation of Magistrate Judge Leen, (doc. # 4), be, and the same hereby are, ADOPTED in
26 their entirety.

1 IT IS FURTHER ORDERED that the instant case be, and the same hereby is, DISMISSED
2 without prejudice to the plaintiff's ability to commence a new action in which he either pays the
3 filing fee or submits a completed application to proceed *in forma pauperis* along with the
4 supporting documents.

5 DATED August 31, 2015.

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7 UNITED STATES DISTRICT JUDGE
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